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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

September 1, 2000

Honorable James M. Seif, Chairman
Environmental Quality Board
Rachel Carson State Office Building
400 Market Street, 16th Floor
Harrisburg, PA 17105

Re: Regulation #7-349 (IRRC #2120)
Environmental Quality Board
Licensing of Blasters & Storage, Handling & Use of Explosives

Dear Chairman Seif:

Enclosed are our Comments. They will soon be available on our website at www.irrc.state.pa.us.

Our Comments list objections and suggestions for consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you would like to discuss these Comments, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce
Executive Director
wbg
Enclosure

cc: Honorable Arthur D. Hershey, Majority Chairman, House Environmental Resources & Energy Committee
Honorable Camille George, Democratic Chairman, House Environmental Resources & Energy Committee
Honorable Mary Jo White, Chairman, Senate Environmental Resources & Energy Committee
Honorable Raphael J. Musto, Minority Chairman, Senate Environmental Resources and Energy Committee
Sharon Trostle
Barbara Sexton

Comments of the Independent Regulatory Review Commission

on

Environmental Quality Board Regulation No. 7-349

Licensing of Blasters and Storage, Handling and Use of Explosives

September 1, 2000

We submit for your consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) which have not been met. The Environmental Quality Board (EQB) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered by August 2, 2002, the regulation will be deemed withdrawn.

1. Section 210.13. General. – Public safety and Clarity.

Subsection (b) states that certain individuals may be exempted from obtaining a blaster's license if they are detonating "extremely small amounts of explosives." What qualifies as "extremely small amounts of explosives"?

2. Section 210.14. Eligibility requirements. – Public safety and Clarity.

Subsection (b)(1) requires an applicant to be "of good moral character." It is unclear whether the applicant needs a character witness or whether an applicant who has been convicted of a crime will be excluded. The EQB should clearly state the qualifications it will use to determine "good moral character."

Subsection (b) has a substantive typographical error. It states "the Department will **not** issue or renew a license unless the following conditions are met." (Emphasis added.) The second condition to be met in Paragraph (2) states the "applicant has demonstrated an inability or lack of intention to comply...." Paragraph (2) should state that the "applicant has demonstrated an ability and intention to comply...."

3. Section 210.15. License application. – Public safety and Clarity.

This section provides application requirements, but does not state how an applicant can obtain the application form. For clarity, this section should state where applications can be obtained.

Subsection (b) requires a notarized statement from the blaster who supervised the applicant, "or the applicant's employer." Given the broad range of employment situations, it is possible the applicant's employer may not have supervised the applicant. It is also possible the supervising blaster's employer could vouch for the applicant if the supervising blaster is no longer available.

The EQB should review this provision to ensure the notarized statement is from the person or organization with direct knowledge of the applicant's expertise.

Subsection (b)(1) requires a notarized statement which describes "how the applicant assisted in preparation of the blasts and for how long." Since there are different categories of blasting licenses, this subsection should also require a description of the types of materials that the applicant worked with.

4. Section 211.101. Definitions. – Public safety, Need and Clarity.

Blast site

"Blast site" is defined as "the area where the explosive charges are located." (Emphasis added.) The use of the term "area" could cause confusion with the defined term "blast area." For clarity, the definition of "blast site" should use another term such as "point(s)" instead of "area."

Building

The term "building" is used throughout Chapter 211. For example, Section 211.124(a)(14) requires the blasting activity permit application to include the distance and direction to the nearest building. In the definition of "building," use of the phrase "regularly occupied" raises three questions.

First, whether a building is occupied only matters if the building is occupied when the explosives are detonated. Why is the frequency of occupation relevant?

Second, since property must be protected, why doesn't the definition of "building" include unoccupied buildings?

Finally, assuming "regularly occupied" remains in the definition, what criteria would the blaster use to actually determine if a structure is "regularly occupied"?

5. Section 211.121. General requirements. – Clarity.

Subsection (d) states "a permit will not be issued unless the application is complete and demonstrates that the proposed activities comply with the applicable requirements of this chapter." If the EQB determines an application is incomplete, will it notify the applicant? In addition, can the applicant amend the application to provide the necessary information or materials to complete the application? If so, the regulation should indicate that the EQB will notify applicants of an incomplete application and identify the missing items necessary to complete the application.

6. Section 211.124. Blasting activity permits. – Clarity.

Subsection (a)(17) requires a permit application to include proof that residents within 200 feet of the blast site were informed of the proposed blasting operation. This notification could be "personal notification, written material left at each residence or first class mail." We have two

questions. What constitutes proof of notification? In situations involving rental units or business properties, should the blaster notify the current tenants or property owner?

7. Section 211.133. Blast report. – Need and Clarity.

Subsection (a) has a typographical error. It requires the blaster-in-charge to prepare a report of “each blast report.” (Emphasis added.) This phrase should read “each blast” rather than “each blast report.”

Subsection (a) includes the sentence: “The Department **may develop** and require a blast report form to be used.” (Emphasis added.) How and when will licensees and permittees be notified that the EQB has opted to require a report form? How and where will people obtain copies of the form?

One provision in Subsection (a)(23) goes into effect in three years and requires monitoring records to be made part of the report within seven days of the blast. A commentator notes that some blasters have to collect data from a number of monitoring points from varied locations and suggests that 14 days would be more reasonable. The EQB should consider allowing 14 days or explain why seven days is sufficient time for collection of the required data.

Subsection (a)(24) states the report will include “the actions taken to make a site safe” if a misfire occurred. For clarity, Subsection 211.133(a)(24) should reference the appropriate actions to take when there is a misfire listed in Subsection 211.157(e).

Subsection (b) states the Department “may” require monthly summaries. The EQB should explain the necessity for monthly summaries, the circumstances when monthly summaries would be required and how the blaster will be notified.

8. Section 211.141. General requirements. – Reasonableness and Clarity.

Subsections (11)(i) and (ii) establish requirements for fire extinguishers based on vehicle weight. These provisions should be consistent with the requirements of the Pennsylvania Department of Transportation.

Subsection (12) requires explosives to be loaded into a vehicle so that the “explosives containers are not exposed to sparks or hot gases from the exhaust tailpipe.” This subsection further recommends the use of exhaust systems that discharge upwards to avoid possible exposures of the explosives to sparks or hot gases. If the explosive containers are loaded onto the bed of a truck, how will an upward exhaust discharge protect the containers from exposure to sparks?

9. Section 211.151. Prevention of damage. – Reasonableness and Clarity.

Subsection (b) states:

Blasting may not cause flyrock. If flyrock occurs, the blaster-in-charge shall notify the Department within 4 hours of learning of the flyrock.

Commentators believe flyrock is so common that blasters will be required to notify the Department after every blast. Is this the EQB's intent? If the goal is to prevent flyrock from being ejected from the blast area, the regulation should be amended to clarify this objective.

Subsection (c) requires a blast to achieve either a scaled distance of 90 or the maximum peak velocity as indicated in Figure 1. One commentator believes these standards may be too restrictive when applied to unconsolidated materials in the vicinity of a blast. Should geologic variations be considered in the determination of vibration limits?

10. Section 211.154. Preparing the blast. - Clarity.

Subsection (b) allows the EQB to establish a different distance limitation. The EQB should explain the necessity for this provision. The regulation should provide information regarding the circumstances for which the EQB would establish a different distance limitation and how the blaster will be notified.

Subsection (c) states a "person may not prepare or detonate a blast unless another person is present..." However, Section 211.156(b) states that only the "blaster-in-charge may detonate a blast." Further Subsection (e) states that "only the blaster-in-charge, other blasters, and up to six assistants per blaster may be at a blast site..." To make these subsections consistent, the first reference to the term "person" in Subsection (c) should be changed to "blaster-in charge." The second reference to "person" in Subsection (c) should be changed to "blaster or assistant" to be consistent with Subsection (e).

Subsection (f)(2) states that sectional poles connected by brass fittings are permitted, if only the **wooden** end of the pole is used for tamping. The reference to the "wooden end" of the pole should be changed to the "nonsparking material end" of the pole.

Subsection (f)(4) requires blast holes to be checked for obstruction with a **wooden** tamping pole. Consistent with the previous comment, the reference to the "wooden" tamping pole should be replaced with "a tamping pole made of nonsparking material."

Subsection (f)(7) states the EQB may specify the type and amount of stemming. The EQB should explain the necessity for this provision. The regulation should provide information regarding the circumstances for which the EQB would establish a different limitation for stemming and how the blaster will be notified.

11. Section 211.171. General provisions for monitoring. – Reasonableness and Clarity.

Subsection (d) states monitoring instruments with variable "trigger levels" are to set the trigger for ground vibration at a particle velocity of no more than 50% of the compliance limit. However, commentators indicate that this subsection could require a setting as low as 0.1, which could be triggered by traffic activity. The commentators recommend that the trigger be set at "50% of the conservative compliance level of 0.5 inches per second (0.25)." The EQB should consider establishing a more reasonable minimum setting that would not be triggered by traffic activity.

Subsection (e) requires a printout from the instrumentation. There are two issues. Commentators note that older model and brick seismographs do not provide a date and time indicating when the instrument was turned on and off. The EQB should consider adding language, which would allow a blaster to manually supply the on/off times for these instruments. Further the EQB should consider including a three-year phase-in period in this section to be consistent with the requirement for blast reporting equipment in Section 211.133(a)(23).

12. Section 211.173. Monitoring records. – Need and Clarity.

Subsection (c) states:

The Department may require a ground vibration or airblast recording to be analyzed or certified by an independent qualified consultant who is not related to the blasting activity permittee or its customer.

Under what circumstances would the EQB require this type of analysis or certification? The EQB should explain the need for this provision. The regulation should provide information regarding the circumstances when it may require this type of analysis and how the blaster will be notified.

13. Section 211.182. General provisions. – Clarity.

Subsection (c) establishes limits for blasting within 200 feet of a utility line. This would apply to all blasting regardless of whether the permittee is also the owner of the utility line. The EQB should consider exempting the owners of the utility line from this requirement.

The EQB should also consider revising the language to allow blasting to accommodate “other measures, as approved by the Department and agreed to by the utility” to permit some flexibility for blasting in the vicinity of utility lines.